

ASSEMBLY BILL

No. 2756

Introduced by Assembly Members Thurmond and Williams

February 19, 2016

An act to amend Sections 3236.5, 3350, 3351, 3352, 3356, and 3357 of the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 2756, as introduced, Thurmond. Oil and gas operations: enforcement actions.

(1) Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law provides that a person who violates certain requirements related to the regulation of oil and gas is subject to a civil penalty not to exceed \$25,000 for each violation. Existing law requires the Oil and Gas Supervisor to consider specified circumstances when establishing the amount of the civil penalty.

This bill instead would authorize the supervisor to consider specified circumstances when establishing the amount of the civil penalty. The bill would authorize the supervisor, in his or her discretion, to treat each day a violation continues or is not cured as a separate violation. The bill would authorize the supervisor to allow a supplemental environmental project, as defined, in lieu of a portion of the civil penalty amount, not to exceed 50% of the civil penalty amount, as specified.

(2) Existing law establishes procedures for an operator of a well or production facility to appeal to the Director of Conservation from an order of the supervisor or a district deputy. Existing law requires a

notice of appeal to be filed with supervisor or with the district deputy who issued the order.

This bill would make numerous changes to the appeal process and procedures. The bill would, among other things, require the notice of appeal to be filed with the director, revise exceptions for when the notice of appeal operates as a stay of the order, revise what costs will be refunded if an emergency order is set aside or modified on appeal, and revise the circumstances in which appeals are to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director.

This bill would make numerous changes to the process and procedures for an informal hearing before the director. The bill would, among other things, authorize the director to extend the date of the hearing for good cause upon his or her own motion, remove the authorization for the hearing to be electronically recorded by either party, revise the timeline in which the director is required to grant or deny a petition to order the testimony of a witness at the hearing, and provide that obtaining subpoenas may be considered good cause to extend the date of the hearing.

(3) Existing law sets forth numerous provisions governing discovery in the context of an informal hearing before the director. Existing law authorizes the supervisor or the director, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, to obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in these provisions.

This bill would make numerous changes to these discovery provisions. The bill would, among other things, require a judge of the superior court, upon application by the supervisor or director, to assign a case number for the proceeding or investigation, to issue an order prescribing the nature and scope of the proceeding or investigation, and to retain jurisdiction for the limited purpose of enforcing subpoenas issued in the proceeding or investigation; authorize the attorney of record for the supervisor or director, upon the assigning of a case number, to issue subpoenas compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts for certain pending proceeding or investigation in the manner specified; authorize the supervisor or director, or his or her inspector, to inspect the well site or production facilities of any owner or operator to ascertain whether the

owner or operator is complying with the certain requirements; authorize the supervisor or director to require any owner or operator to furnish, under penalty of perjury, technical or monitoring reports that the supervisor or director require; and prohibit the division and the department from making available to the public for inspection portions of a report that might disclose trade secrets, well data granted confidential status, or other confidential or privileged information, when requested by the owner or operator furnishing the report. Because the bill would expand the crime of perjury, it would impose a state-mandated local program.

(4) Existing law provides if the operator does not appeal an order, seek judicial review of a decision affirming or modifying an order within the time provided in law, or if the court has affirmed the decision, then any charge, including penalty and interest, that the decision permits the supervisor to impose constitutes a state tax lien against the real and personal property of the operator.

This bill additionally would include any civil penalties imposed by the supervisor for violations of certain requirements related to the regulation of oil and gas in these provisions. The bill would authorize the supervisor to apply to the appropriate superior court for a clerk's judgment, in addition to the state tax lien, and would provide provisions related to obtaining the clerk's judgment.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3236.5 of the Public Resources Code is
- 2 amended to read:
- 3 3236.5. (a) A person who violates this chapter or a regulation
- 4 implementing this chapter is subject to a civil penalty not to exceed
- 5 twenty-five thousand dollars (\$25,000) for each violation. ~~A person~~
- 6 ~~who commits~~ *At the supervisor's discretion, each day a violation*
- 7 *continues or is not cured may be treated as a separate violation.*
- 8 *For each day a violation of Article 3 (commencing with Section*

1 3150) ~~is subject to a~~ *continues or is not cured*, the civil penalty of
2 *amount shall not be less than ten thousand dollars (\$10,000) and*
3 ~~not to exceed twenty-five thousand dollars (\$25,000) per day per~~
4 ~~violation. (\$10,000).~~ An act of God and an act of vandalism beyond
5 the reasonable control of the operator shall not be considered a
6 violation. The civil penalty shall be imposed by an order of the
7 supervisor pursuant to Section 3225 upon a determination that a
8 violation has been committed by the person charged. The
9 imposition of a civil penalty under this section shall be in addition
10 to any other penalty provided by law for the violation. When
11 establishing the amount of the civil penalty pursuant to this section,
12 the supervisor ~~shall~~ *may* consider, in addition to other relevant
13 circumstances, all of the following:

- 14 (1) The extent of harm *or potential harm* caused by the violation.
- 15 (2) The persistence of the violation.
- 16 (3) The pervasiveness of the violation.
- 17 (4) The number of prior violations by the same violator.
- 18 (5) *The degree of culpability of the violator.*
- 19 (6) *Any economic benefit to the violator resulting from the*
20 *violation.*
- 21 (7) *The violator's assets, liabilities, and net worth.*
- 22 (8) *The supervisor's prosecution costs.*

23 (b) An order of the supervisor imposing a civil penalty shall be
24 reviewable pursuant to Article 6 (commencing with Section 3350).
25 When the order of the supervisor has become final and the penalty
26 has not been paid, the supervisor may apply to the appropriate
27 superior court for an order directing payment of the civil penalty.
28 The supervisor may also seek from the court an order directing
29 that production from the well or use of the production facility that
30 is the subject of the civil penalty order be discontinued until the
31 violation has been remedied to the satisfaction of the supervisor
32 and the civil penalty has been paid.

33 (c) *The supervisor may allow a supplemental environmental*
34 *project in lieu of a portion of the civil penalty amount. The*
35 *supplemental environmental project may not be more than 50*
36 *percent of the total civil penalty amount.* Any amount collected
37 under this section *that is not allocated for a supplemental*
38 *environmental project* shall be deposited in the Oil, Gas, and
39 Geothermal Administrative Fund.

1 (d) “*Supplemental environmental project*” means an
2 *environmentally beneficial project that a person, subject to an*
3 *order of the supervisor imposing a civil penalty, voluntarily agrees*
4 *to undertake in settlement of the action and to offset a portion of*
5 *a civil penalty.*

6 SEC. 2. Section 3350 of the Public Resources Code is amended
7 to read:

8 3350. (a) The operator of a well or a production facility to
9 whom the supervisor or district deputy has issued an order pursuant
10 to this chapter may file a notice of appeal ~~to the director~~ from that
11 order. The notice of appeal shall be in writing and shall be filed
12 ~~with the supervisor or with the district deputy who issued the order.~~
13 *director.* The operator shall file the appeal within 10 days of the
14 service of the order, or within 10 days of the posting of a copy of
15 an order made pursuant to Section 3308. Failure of the operator
16 to file an appeal from the order within the 10-day period shall be
17 a waiver by the operator of its rights to challenge the order. If the
18 order, other than an order made pursuant to Section 3308, is served
19 by mail, the time for responding shall be determined as provided
20 in Section 1013 of the Code of Civil Procedure.

21 (b) (1) The filing of a written notice of appeal shall operate as
22 a stay of the order, except when an order for *testing or* remedial
23 work or an order to cease and desist *production facility* operations
24 is issued as an emergency order pursuant to Section ~~3226.~~ 3226,
25 *or when the order is to cease injection operations. If the order is*
26 *an order to cease injection operations, then the operator shall*
27 *cease injection as soon as it is safe to do so.* If the order is an
28 emergency order, the operator shall immediately cease and desist
29 the specified *production facility* operations and shall perform
30 whatever work is required by the order to alleviate the emergency
31 or shall permit the agents appointed by the supervisor to perform
32 that work.

33 (2) ~~If the~~ an emergency order *for testing or remedial work* is
34 set aside or modified on appeal, the supervisor shall refund the
35 reasonable costs incurred by the operator for whatever work is not
36 required by the set-aside or modified order or shall not impose
37 costs for work performed by the supervisor or the supervisor’s
38 agents if the work is excluded from the modified order or the order
39 is set aside. *Only the costs of remedial work performed shall be*

1 *refunded, and there shall be no reimbursement for lost profits or*
2 *increased production costs.*

3 (3) (A) The costs to be refunded pursuant to paragraph (2) by
4 the supervisor shall be determined in a hearing before the director
5 after the exhaustion of appeals. The operator shall have the burden
6 of proving the amount of costs to be refunded.

7 (B) A determination by the director as to the amount of costs
8 to be refunded pursuant to paragraph (2) may be appealed by the
9 operator pursuant to subdivision (a) of Section 3354.

10 (4) If the operator believes that it will be irretrievably injured
11 by the performance of the work required to alleviate the emergency
12 pending the outcome of the appeal, the operator may seek an order
13 from the appropriate superior court restraining the enforcement of
14 the order pending the outcome of the appeal.

15 SEC. 3. Section 3351 of the Public Resources Code is amended
16 to read:

17 3351. (a) A hearing shall be provided in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division
19 3 of Title 2 of the Government Code only in an appeal from an
20 order in the following circumstances:

21 (1) Issued pursuant to a Section 3237 finding that the operator's
22 wells are deserted and should be plugged and abandoned.

23 (2) Imposing civil penalties totaling more than ~~ten~~ *twenty-five*
24 *thousand dollars* ~~(\$10,000)~~ *(\$25,000)*.

25 (3) Rescinding an *entire* injection project approval for a project
26 that has already commenced.

27 (4) Imposing a life-of-well bond or a life-of-production facility
28 bond.

29 (b) An order issued pursuant to Section 3225 shall satisfy the
30 ~~requirement of substantive requirements of an accusation pursuant~~
31 ~~to Section 11503 of the Government Code that an accusation be~~
32 ~~filed; and may be filed when scheduling a formal hearing in~~
33 *accordance with this chapter and Chapter 5 (commencing with*
34 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
35 *Code. All applicable formal hearing deadlines do not commence*
36 *until a formal hearing is scheduled. When scheduling a formal*
37 *hearing after an appeal from an order under this chapter, the*
38 *supervisor is not required to send a Notice of Defense statement*
39 *and the operator is not required to request a hearing.*

1 (c) For an appeal of an order that is not described in subdivision
2 (a), a hearing shall be conducted by the director in accordance with
3 Sections 3352 and 3353.

4 (d) For an appeal of an order that is described in subdivision
5 (a) and is also an emergency order for *testing or* remedial work or
6 to cease and desist *production facility* operations, a hearing shall
7 be conducted by the director in accordance with Sections 3352
8 and 3353 for the limited purpose of considering the emergency
9 ~~order for remedial work or to cease and desist operations.~~
10 *reasonableness of the supervisor's determination that an*
11 *emergency exists.* All other penalties and requirements imposed
12 by the order shall be considered at a hearing provided in accordance
13 with Chapter 5 (commencing with Section 11500) of Part 1 of
14 Division 3 of Title 2 of the Government Code.

15 SEC. 4. Section 3352 of the Public Resources Code is amended
16 to read:

17 3352. (a) A hearing conducted by the director shall adhere to
18 the following:

19 (1) When an order is not issued as an emergency order, within
20 30 days from the date of the service of the notice of appeal, the
21 director shall provide to the operator notice of the time and place
22 of the hearing. The hearing shall take place within 30 days after
23 the date of the director's notice. The notice shall inform the
24 operator that the director may extend the date of the hearing for
25 up to 60 days for good cause upon *his or her own motion, or an*
26 application of the operator or the supervisor.

27 (2) When an order has been issued as an emergency order, within
28 10 days from the date of the service of the notice of appeal, the
29 director shall provide to the operator notice of the time and place
30 of the hearing. The hearing shall take place within 20 days after
31 the date of the director's notice. The notice shall inform the
32 operator that the director may extend the date of the hearing for
33 up to 30 days for good cause upon *his or her own motion, or an*
34 application of the operator or the supervisor.

35 (b) The director shall conduct the hearing within the district
36 where the majority of the wells or production facilities that are the
37 subject of the order are located, or the hearing may be conducted
38 at a location outside of that district upon application of the operator.
39 The hearing shall be reported by a stenographic reporter and may,
40 in addition, be electronically recorded by either party. *reporter.*

1 (c) The notice of hearing shall inform the operator of its right
2 to file a written answer to the charges no later than 10 days before
3 the date of the hearing. The notice also shall inform the operator
4 that it has the right to present oral and documentary evidence at
5 the hearing.

6 (d) Upon a verified and timely petition of the operator, the
7 director may order the testimony of a witness at the hearing. The
8 petition shall be served upon the director and the other party within
9 five days after the filing of an appeal and shall set forth the name
10 and address of the witness whose testimony is requested, to the
11 extent known; a showing of the materiality of the testimony; and
12 a showing that the witness cannot be compelled to testify absent
13 an order of the director. The supervisor may file an opposition to
14 the petition within five days after the petition is served. The director
15 shall either deny or grant the petition within 10 days after receipt
16 of the petition and receiving any opposition to the petition. Upon
17 granting a petition, the director shall issue a subpoena pursuant to
18 Section 3357 compelling the testimony of the witness at the
19 hearing. *Obtaining subpoenas may be considered good cause to*
20 *extend the date of the hearing under paragraph (1) or (2) of*
21 *subdivision (a).*

22 (e) The director may convert a hearing pursuant to this section
23 to a formal hearing conducted in accordance with Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code in any of the following circumstances:

26 (1) The operator makes a showing satisfactory to the director
27 that the order being appealed is likely to result in termination of
28 an established oil or gas producing or injection operation.

29 (2) It appears to the director that the hearing will involve
30 complex evidentiary or procedural issues that will cause more than
31 minimal delay or burdens.

32 (3) The operator and the supervisor agree and stipulate to convert
33 the hearing to a formal hearing.

34 (f) The conversion of a hearing pursuant to this section to a
35 formal hearing shall be conducted in accordance with Article 15
36 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of
37 Division 3 of Title 2 of the Government Code. *If a hearing for an*
38 *appeal of an emergency order is converted to a formal hearing,*
39 *the supervisor shall endeavor to schedule and notice a formal*
40 *emergency hearing as soon as reasonably possible and,*

1 *notwithstanding Section 11517 of the Government Code, the*
2 *director shall only have 30 days from receipt of the administrative*
3 *law judge's proposed emergency hearing decision to act as*
4 *prescribed in subparagraphs (A) to (E), inclusive, of paragraph*
5 *(2) of subdivision (c) of Section 11517 of the Government Code.*

6 SEC. 5. Section 3356 of the Public Resources Code is amended
7 to read:

8 3356. (a) If the operator does not appeal an order, if the
9 operator does not timely seek judicial review of a decision
10 affirming or modifying an order within the time provided in Section
11 3354, or if the operator has timely sought and obtained judicial
12 review and the court has affirmed the decision, then any charge,
13 including penalty and interest, that the decision permits the
14 supervisor to impose on the operator for work performed by the
15 supervisor or the supervisor's agents, *and any civil penalties*
16 *imposed under Section 3236.5* shall constitute a state tax lien
17 against the real and personal property of the operator pursuant to
18 Section 3423.

19 (b) *In addition to a state tax lien, the supervisor may apply to*
20 *the appropriate superior court for a clerk's judgment. The*
21 *application, which shall include a certified copy of the final agency*
22 *order or decision, shall constitute a sufficient showing to warrant*
23 *the issuance of the judgment. The court clerk shall enter the*
24 *judgment immediately in conformity with the application. The*
25 *judgment so entered shall have the same force and effect as, and*
26 *shall be subject to all the provisions of law relating to, a judgment*
27 *in a civil action, and may be enforced in the same manner as any*
28 *other judgment of the court. The court shall make enforcement of*
29 *the judgment a priority.*

30 SEC. 6. Section 3357 of the Public Resources Code is amended
31 to read:

32 3357. (a) In any proceeding before the director, and in any
33 proceeding instituted by the supervisor for the purpose of enforcing
34 or carrying out the provisions of this division, or for the purpose
35 of holding an investigation to ascertain the condition of any well
36 or wells complained of, or which in the opinion of the supervisor
37 may reasonably be presumed to be improperly located, drilled,
38 operated, maintained, or conducted, the supervisor and the director
39 shall have the power to administer oaths and may apply to a judge
40 of the superior court of the county in which the proceeding or

1 investigation is pending for ~~a subpoena~~ *subpoenas* for witnesses
2 to attend the proceeding or investigation. Upon the application of
3 the supervisor or the director, the judge of the superior court shall
4 *assign a case number for the proceeding or investigation, shall*
5 *issue an order prescribing the nature and scope of the proceeding*
6 *or investigation, and shall retain jurisdiction for the limited*
7 *purpose of enforcing subpoenas issued in the proceeding or*
8 *investigation. Upon the assigning of a case number, the attorney*
9 *of record for the supervisor or director may issue a subpoena*
10 *subpoenas directing the witness* witnesses to attend the proceeding
11 or investigation, and ~~such person~~ *those persons* shall be required
12 to produce, when directed, all records, surveys, documents, books,
13 or accounts in the witness' custody or under the witness' control;
14 except that no person shall be required to attend upon ~~such~~ *the*
15 proceeding unless the person resides within the same county or
16 within 100 miles of the place of attendance. The *attorney of record*
17 *for the supervisor or the director may in such that case cause the*
18 depositions of witnesses residing within or without the state to be
19 taken in the manner prescribed by law for like depositions in civil
20 actions in superior courts of this state under Title 4 (commencing
21 with Section 2016.010) of Part 4 of the Code of Civil Procedure,
22 and ~~may, upon application to a judge of the superior court of the~~
23 ~~county within which the proceeding or investigation is pending,~~
24 ~~obtain a subpoena~~ *may issue subpoenas* compelling the attendance
25 of witnesses and the production of records, surveys, documents,
26 books, or accounts at ~~such designated places as the judge may~~
27 ~~designate~~ within the limits prescribed in this section.

28 (b) (1) *In conducting a proceeding or investigation specified*
29 *in subdivision (a), the supervisor or director may require an owner*
30 *or operator to furnish, under penalty of perjury, technical or*
31 *monitoring reports that the supervisor or director requires. The*
32 *burden, including costs, of any report shall bear a reasonable*
33 *relationship to the need for the report and the benefits to be*
34 *obtained from the report. In requiring a report, the supervisor or*
35 *director shall explain in writing to the owner or operator the need*
36 *for the report, and shall identify the evidence that supports*
37 *requiring that owner or operator to provide the report.*

38 (2) *When requested by the owner or operator furnishing the*
39 *report, neither the division nor the department shall make available*
40 *to the public for inspection portions of a report that might disclose*

1 *trade secrets, well data granted confidential status pursuant to*
2 *Section 3234, or other confidential or privileged information. The*
3 *division or department shall make that confidential or privileged*
4 *information available to other public agencies as needed for*
5 *regulatory purposes and in accordance with a written agreement*
6 *with the other public agency regarding the sharing of the*
7 *information.*

8 *(c) In conducting a proceeding or investigation pursuant to*
9 *subdivision (a), the supervisor or director, or his or her inspector,*
10 *may inspect the well site or production facilities of any owner or*
11 *operator to ascertain whether the owner or operator is complying*
12 *with the requirements of or authorized by this division. The*
13 *inspection shall be made with the consent of the owner or operator*
14 *or, if consent is withheld, with a warrant duly issued pursuant to*
15 *the procedure set forth in Title 13 (commencing with Section*
16 *1822.50) of Part 3 of the Code of Civil Procedure. In the event of*
17 *an emergency affecting the public health or safety, an inspection*
18 *may be performed without consent or a warrant. This subdivision*
19 *is in addition to any other inspection authority granted or*
20 *authorized by this division.*

21 *(d) As used in this section, "evidence" means any relevant*
22 *evidence on which responsible persons are accustomed to rely in*
23 *the conduct of serious affairs, regardless of the existence of any*
24 *common law or statutory rule that might make improper the*
25 *admission of the evidence over objection in a civil action.*

26 SEC. 7. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.